IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2007

CORAM

The Honourable Mr. Justice P.K. MISRA

and

The Honourable Mr. Justice S. RAJESWARAN

H.C.P. No.1136 of 2006

D. Ramesh ... Petitioner

Vs.

1. The Secretary to Govt.
of Tamil Nadu,
Prohibition and Excise Dept.,
Chennai.

2. The Commissioner of Police
Greater Chennai, Egmore
Chennai - 8.

3. Inspector of Police,
T-4 Maduravoiyal Police Station,
Chennai. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus or direction leading to the detention order vide No.223/BDFGISSV/2006 dated 5.9.2006 on the file of the second respondent and call for entire records pertaining to the above detention order and direct to produce the detenu D. Ramesh, who is presently confined at Central Prison, Chennai.

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For Petitioner : Mr. C. Duraipandian

For Respondents : Mr. M. Babu Muthu Meeran
Additional Public Prosecutor

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O R D E R

(The Order of the Court was made by P.K. Misra, J.)

Heard Mr. C. Duraipandian, learned counsel for the petitioner and Mr. M. Babu Muthu Meeran, learned Additional Public Prosecutor appearing for the respondents.

2. The order of preventive detention has been challenged by the detenu. The detention is on the ground that the detenue is a Goonda within the meaning of Section 3(1) of Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

3. From the grounds of detention, it appears that the Detaining Authority has referred to three adverse cases registered under Sections 341, 323, 336 and 307 of the Indian Penal Code in Crime No.2382 of 2005, under Sections 147, 148, 427, 448 and 506 (2) of the Indian Penal Code in Crime No.921 of 2006 and under Sections 341, 324 and 506(2) of the Indian Penal Code in Crime No.1482 of 2006. The ground case is registered by Madhuravoyal Police Station in Crime No.1511 of 2006 dated 11.8.2006 under Sections 341, 324, 336, 307, 427 and 506(2) of the Indian Penal Code. The allegation in the F.I.R. relating to the ground case is to the effect that the injured informant was assaulted by one D.Ramesh and Mathesh @ Mathu. It was specifically stated that when D. Ramesh was trying to assault with veecharuval from his back, aiming at the head, the informant has been attacked on the left hand and bleeding injury was caused to him. The other aggrieved person has attacked him with stick.

4. The occurrence is alleged to have taken place on 11.08.2006 at 6.00 hours and the incident was reported on 11.08.2006 at 11.30 hours. Thereafter, from the materials on record, it appears that the injured was taken to the Medical Officer for examination at 12.30 hours. The accident register copy available at page No.105 of the booklet shows that the injured was allegedly assaulted by two unknown persons at 6 a.m. on 11.8.2006. The nature of injury has been described as "there is a swelling in the left fore arm and abrasion in the left fore arm". However, the report does not indicate about the bleeding injury. On that basis, learned counsel for the petitioner has submitted that there is non- application of mind on the part of the Detaining Authority.

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5. It is of course true, that the order of detention is based on the subjective satisfaction of the detaining Authority. However, before passing an order of detention, the Detaining Authority is required to apply his mind to all material circumstances available on record at that stage. The fact that the injured person has stated before the Doctor that he was assaulted by two unknown persons flies in the face of recital in the F.I.R. that he was assaulted by the detenu and another named person. At this stage, it is not possible for us to come to any conclusion as to which version is correct, but, there appears to be a strong contradiction in these two versions. However, it was necessary for the detaining Authority to apply his mind to the above aspect before coming to any conclusion in the matter.

6. Since the discrepancies were glaring obviously, the Detaining Authority should have tried to find out at that stage as to how the names of the assailants could be indicated in the F.I.R., when before the Doctor, the injured had stated that he was injured by two unknown assailants, even though the examination before the Doctor took place one hour after the time when the F.I.R. was supposedly lodged. In our considered opinion, this would amount to non application of mind.

7. In such circumstances, we are constrained to set aside the detention order. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith unless he is required in connection with any other case.

ssa.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Govt.
of Tamil Nadu,
Prohibition and Excise Dept.,
Chennai.

2. The Joint Secretary
to the Government of Tamil Nadu,
Public (Law and Order) Department,
Fort St George, Chennai 9.

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3. The Commissioner of Police
   Greater Chennai, Egmore
   Chennai - 8.

4. The Superintendent, Central Prison,
   Chennai.

5. The Inspector of Police,
   T-4 Maduravoiyal Police Station,
   Chennai.

6. The Public Prosecutor,
   High Court, Madras.

+ 1 cc to Mr. C. Duraipandian, Advocate SR No. 5316

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